

Bad Laws: How Good Intentions Can Cause Harm

People want their families to feel safe from the dangers of the world. It is this feeling that forms the foundation of our legal system. All types of laws are drafted with this safety in mind. There are ordinances to make sure buildings are safe. There are traffic laws to insure that we drive in a safe manner. There are a many laws to govern how we treat one another. These include laws that punish those who harm members of the society, such as rape and murder. These laws are known as malum in se. Of course, there are also laws that punish regardless of intent, like speeding or most forms of illegal possession. These laws are known as malum prohibitum. If you haven't noticed, there is a theme going on here. The theme is intent, either on the part of the wrong-doer or the legislature. Punishing the evil intent of a potential criminal is pretty straight forward as well as supported by the society at large. The trick part is when the legislature's intent is to punish regardless of the actor, deeming the act itself illegal. I'm sure you have a question, like where is this going. The next step in our discussion is here.

A woman, who is a fourth year medical student and from Tennessee, visits the 9/11 memorial while on a job interview in New York. The woman, who had no criminal record and is licensed to carry a handgun in Tennessee, spots a sign at the memorial that states no weapons are allowed. Being the law abiding citizen that she is, the woman then locates a security guard to have her gun checked before she enters the memorial. The guard escorts her to a police officer who promptly arrests her for carrying an illegal firearm. It's illegal since the woman did not have a license to carry a handgun in New York as firearm licenses are not reciprocal between states like driving licenses are. The district attorney in the case is seeking the minimum sentence for felony gun possession, which is three and a half years.

Now for the fun, what intent is being punished in this scenario? The woman does not seem to possess the "evil-doer" intent as she was trying to obey the laws. (Of course, unbeknownst to her, to be in compliance with New York law, obeying the law would have meant leaving her gun at home.) The usual intent of the legislature in illegal handgun cases is to be tough on crime and add extra sentences to those guilty criminals who use or possess guns. Thus, a drug dealer arrested with an illegal gun would face an extra three and a half years on top of his conviction for drug dealing. The laws are written this way so that any judge sentencing a criminal cannot use his/her discretion and lower the sentence. The problem with these types of laws is when people whom the law is not designed to target get arrested, such as the average person. Legislators in this case are even asking the district attorney to not seek the minimum punishment. This is an interesting situation, as legislators are asking a government agency to not enforce a law that the legislature wrote.

Now, there is not much that can be done for the woman from Tennessee. She is just going to have to see how things shake out in the end. What can we do about the future? We'll just have to think about what type of society we want and elect the appropriate legislators. Do we want a society where the courts can use their discretion during sentencing? We would have to accept that there will be occasions where, every once in a while, a particular sentence will not be harsh enough for a particular criminal. Or, do we want laws that have enforced minimums for certain crime? We would have to accept that these laws would allow for people to serve long sentences

even though the “criminal” had no intent to harm anyone? No answers here, just a lot of thinking.